

ARTICLE XVII. ZONING BOARD OF ADJUSTMENT*

*Note --See the editor's note at Art. XIII.

Cross reference(s)--Administration, Ch. 2; tenure of members of boards and commissions, § 2-1; appeals from orders of minimum housing inspector, § 10-54.

Section 17.01. Zoning board of adjustment established; composition, term of office and compensation.

(1) A zoning board of adjustment is hereby established for the City of Salisbury and the extraterritorial jurisdictional area thereof.

(2) The zoning board of adjustment shall consist of five (5) members and seven (7) alternate members. Four (4) members and four (4) alternate members shall reside in the jurisdictional area within the municipal corporate limits of the City of Salisbury and shall be appointed by the city council; one (1) member and three (3) alternate members representing the Salisbury extraterritorial jurisdictional area shall be appointed by the Rowan County commissioners at the request of the Salisbury city council or as by law provided. All municipal and all county appointments shall be for overlapping terms of three (3) years, and appointment to unexpired terms shall be for the remainder of that unexpired term. Those terms of office now expiring on December 31 are hereby extended to expire on March 31 of the succeeding calendar year, and thereafter all terms shall expire on March 31 accordingly, thereby modifying the existing terms as follows: Those terms expiring December 31, 1980, shall expire March 31, 1981; those terms expiring December 31, 1981, shall expire March 31, 1982; and those terms expiring December 31, 1982, shall expire March 31, 1983.

(3) The zoning board of adjustment impaneled shall consist of five (5) members, with four (4) of the impaneled members representing the jurisdiction within the municipal corporate limits, and one (1) impaneled member representing the extraterritorial jurisdictional area.

(4) Members shall serve without pay, but may be reimbursed for any expenses incurred while representing the board.

(Ord. No. 1975-26, § 1, 4-15-75; Ord. No. 1976-65, § 1, 11-16-76; Ord. No. 1978-37, § 1, 8-15-78; Ord. No. 1980-48, § 1, 5-6-80)

Section 17.01.1. Alternate members of the board of adjustment.

Alternate members, while attending any regular or special meeting of the board and serving in the capacity of a regular member, shall have and exercise all the representative powers and duties of such regular member so absent. Extraterritorial alternate members shall serve on the board of adjustment only in the absence of the extraterritorial jurisdictional representative member. Alternate members from the jurisdictional area within the municipal corporate limits shall serve on the board of adjustment only in the absence of board members representing the jurisdictional area within the municipal corporate limits.

(Ord. No. 1975-26, § 1, 4-15-75; Ord. No. 1976-65, § 2, 11-16-76)

Section 17.02. Jurisdiction and decisions of the zoning board of adjustment.

All members of the zoning board of adjustment shall have equal rights, privileges, and duties in all matters pertaining to the regulation of both the extraterritorial jurisdictional area and the jurisdictional area within the corporate limits of the City of Salisbury. The concurring vote of four-fifths of the members of

the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this ordinance, to decide in favor of the applicant any matter upon which the board is required to pass under the zoning ordinance or to effect any variation in the zoning ordinance.

On all appeals, applications and other matters brought before the zoning board of adjustment, said board shall inform, in writing, all of the parties involved of its decisions and the reasons therefor.

(Ord. No. 1975-26, § 1, 4-15-75; Ord. No. 1976-65, § 3, 11-16-76; Ord. No. 1978-30, § 1, 7-18-78)

Section 17.03. Proceedings of the zoning board of adjustment.

The board of adjustment shall elect a chairman and vice-chairman from its members who shall serve for one (1) year or until reelected or until their successors are elected. The board shall appoint a secretary, who may be a municipal officer, an employee of the city, a member of the planning board or a member of the board of adjustment. The board shall adopt rules and bylaws in accordance with the provisions this ordinance and of G.S. ch. 160A, art. 19. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public.

Section 17.04. Appeals, hearings and notice.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Salisbury affected by any decision of the zoning administrator or other city official based on this ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the zoning administrator and with the board of adjustment a written notice of appeal specifying the grounds thereof.

All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the board of adjustment.

The board of adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it, and give due notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, or by agent or by attorney.

Section 17.05. Stay of proceedings.

An appeal stays all legal proceedings in furtherance of the action appealed from, with the following exceptions:

- (1) The zoning administrator certifies to the board of adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property; or
- (2) The zoning administrator certifies to the board of adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, seriously interfere with enforcement of the ordinance because the violation charged is transitory in nature.

In either case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application, on notice to the zoning administrator, and on due cause shown.

(Ord. No. 1975-26, § 1, 4-15-75; Ord. No. 1977-61, § 1, 12-20-77)

Section 17.06. Powers and duties of the board of adjustment.

The zoning board of adjustment shall have the following powers and duties:

- (1) *Administrative review.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this ordinance, including interpretation of zoning maps and disputed questions of lot lines or district boundary lines, and similar questions as they arise in the administration of the ordinance.
- (2) *Special exceptions and referrals.* The board of adjustment may permit special exceptions to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance, and shall hear and decide all matters referred to it or upon which it is required to pass under this zoning ordinance.
- (3) *Variances.* To authorize upon appeal in specific cases such variances from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of adjustment that the following conditions exist:
 - (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
 - (b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
 - (c) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
 - (d) The requested variance will be harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
 - (e) The special circumstances are not the result of the actions of the applicant.
 - (f) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.
 - (g) The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved.
- (4) *Conditional uses.* The board of adjustment may approve conditional uses as defined in section 4.02 and as listed, by district, in article VIII. In approving such conditional uses, the board may attach restrictive conditions, which may include, but need not be limited to the following:

- (a) Length of time conditional use is valid.
 - (b) Minimum yard requirements (setbacks) and/or height limitations more restrictive than those listed in section **11.01**, Table of requirements.
 - (c) Buffer and/or landscaping provisions more restrictive than those otherwise required in a particular zoning district.
 - (d) Sign and/or lighting requirements more restrictive than those listed in section 9.09, Signs permitted by district.
 - (e) Parking space requirements more restrictive than those listed in section 7.02, Off-street automobile parking and storage.
 - (f) Duration of time (i.e., hours and/or days) of operation.
- (5) *Appeals.* The board of adjustment may hear and decide on appeals from portions of the City Code other than from Appendix B, Zoning. Specifically, these appeals would be from the following:
- (a) In Chapter 12 [10], Housing, section 12-24 [10-54] addresses ``appeals from orders of inspector" as follows:

[1] An appeal from any decision or order of the inspector may be taken by any person aggrieved thereby [or by any officer, board or commission of the city]. Any appeal from the inspector shall be taken within ten (10) days from the rendering of the decision or service of the order, and shall be taken by filing with the inspector and with the zoning board of adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the inspector shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the board, unless the inspector certifies to the board, after the notice of appeal is filed with him, that[,] by reason of the facts stated in the certificate, a copy of which shall be furnished the appellant, a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one [(1)] day's written notice to the inspector, by the board, or by a court of record upon petition made pursuant to section 160A -446(f) of the North Carolina General Statutes [G.S. 160A -446(f)] and section 12-23 [10-53].

[2] The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reserve [reverse] or affirm, wholly or partly, or may modify the decision or order appealed from, and may make such [any] decision and order as [that] in its opinion ought to be made in the matter, and to that end it shall have all the powers of the inspector, but the concurring vote of four (4) members of the board shall be necessary to reverse or modify any decision or order of the inspector. The board shall have power also in passing upon appeals, in any case where there are [when] practical difficulties or unnecessary hardships in the way of [would result from] carrying out the strict letter of the article [ordinance], to

adapt the application of the article [ordinance] to the necessities of the case to the end that the spirit of the article [ordinance] shall be observed, public safety and welfare secured and substantial justice done.

[3] Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.

- (b) In Chapter 16A, Removal and Disposition of Abandoned, Nuisance, and Junked Motor Vehicles, Section 16A-6, paragraph 3 addresses appeals to the zoning board of adjustment as follows:

With respect to abandoned vehicles on private property, nuisance vehicles, and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle, or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the zoning board of adjustment in writing, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

Editor's note--The provisions referred to in paragraph (b) above have been superseded by § 13-276 et seq. of this Code, in which there is no similar provision.

Within Appendix B, Zoning, appeals may be taken to the zoning board of adjustment as described in section **16.06**, subsection (1) Administrative Review. **Appeals may also be taken from the Historic Preservation Commission regarding approvals or denials of certificates of appropriateness as stated in Article XVII Historic Preservation Commission, Section 17.13, Hearing Procedures, subsection (5).**

The board shall also hear appeals pursuant to section 10-54 of this Code and appendix C.

(Ord. No. 1976-65, § 4, 11-16-76; Ord. No. 1985-72, § 1, 9-3-85; Ord. No. 1990-43, § 1, 8-21-90; **Ord. No. 1996-35; Ord. No. 1999-49**)

Section 17.07. Appeals from the board of adjustment.

Any person or persons, jointly or severally, aggrieved by any decisions of the board, any taxpayer, or any officer, department, board or bureau of the City of Salisbury and extraterritorial area may, within thirty (30) days after the filing of the decision in the office of the board, or within thirty (30) days after a written copy thereof is delivered to the appellant by personal service or registered mail, whichever is later, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said board shall be subject to review by certiorari as provided by law.

(Ord. No. 1978-2, § 1, 1-17-78; **Ord. No. 2000-97**)